

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT AND ALBANY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011010728

ORDER GRANTING REQUEST TO
UNEXPEDITE PROCEEDINGS

On January 24, 2011, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH). One of the issues in the complaint concerned allegations that the District held an improper manifestation determination individualized education program (IEP) meeting in April 2010, and this resulted in Student being expelled. Therefore, OAH set the matter for an expedited hearing concerning this issue. Student has now filed a request to unexpedite this case, and the District has filed a nonopposition to the request.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an IEP meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e) (2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by

the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

DISCUSSION

Student alleges in his complaint of January 24, 2011, that the District denied him a free appropriate public education (FAPE) from April 26, 2010, to January 18, 2011, because the District failed to conduct an appropriate manifest determination IEP meeting in April 2011, and then expelled him. OAH set this matter for expedited proceedings concerning this issue.¹ However, in his request to unexpedite the complaint, Student now contends that his expulsion ended in January 2011, and he returned to school on January 18, 2011. Therefore, he now asks that the complaint be unexpedited. The District does not oppose this request.

There is no current disciplinary procedure at issue and there is no current attempt to change Student’s placement based upon a violation of a code of student conduct. Student is no longer expelled, and has returned to school. The District does not oppose Student’s request to unexpedite the case. Because there is no allegation that District is attempting to change Student’s current placement, there are no issues to be determined through an expedited hearing, and the parties have agreed that the hearing be unexpedited, the request to unexpedite the matter is granted.

ORDER

1. Student’s request to unexpedite this matter is granted.
2. All dates for the expedited proceedings are vacated, specifically February 3, 2011, for mediation, and February 9, 2011 for the expedited prehearing conference, and February 14-16, 2011 for the expedited due process hearing.
3. All dates for unexpedited proceedings shall remain as calendared.

Dated: February 1, 2011

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings

¹ Other issues in the complaint were not set for expedited proceedings.

